IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 34 of 2005

THE NEW INDIA ASSURANCE CO LTD.
V/S
NARENDRA KAUR & ORS

Mr. ANIL BACHAWAT, for the appellant / petitioner

Date of Order : 10.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant.

It is contended by the learned counsel for the appellant, firstly that the learned Tribunal was in error in deciding issue no.1, and in holding the truck driver to be solely negligent in causing the accident.

As appears from the finding of learned Tribunal, that the truck in question was in process of overtaking another truck going ahead of it, and at that time, it had a head-along collision with the jeep, resulting into death of the deceased, who was driving the jeep. It has been found by the learned Tribunal that the accident occurred, at the time, when the delinquent truck had partly overtaken the another truck, with the result that it had become much too late even for himself to retrace.

The submission of learned counsel for the appellant is, that the jeep driver should have been careful, or in any case, should have taken some steps to avert the accident, either by stopping his jeep, or by leaving the road, and giving sufficient passage to the truck. Apart from the fact, that nothing has been brought on record to show that any of these options were at all available to the driver. It is too much to expect, in such a situation, when the truck driver is overtaking the another vehicle unmindful of the traffic coming in front of him. There is nothing on record to show that the overtaking process had prolonged a reasonable length of time, providing sufficient opportunity, or a reasonable opportunity to the jeep driver to allow passage to the truck driver. Rather, as appears from the record, that the truck driver, by his action of unmindful overtaking, had made the avoidance of accident impossible, and such overtaking is clearly attributable to negligence only.

It is significant to note, that the appellant was given permission under Section 170 of the Motor Vehicle Act, and despite that, the appellant has not brought on record any such circumstance, which might

even indicate any contributory negligence on the part of the deceased. Thus, I do not find any error in the finding of the learned Tribunal on issue no.1.

Then learned counsel also challenged the quantum. However, as appears from the judgment, that the deceased was a Junior Engineer employed in the P.H.E.D., Suratgarh, and was 42 years of age. His salary certificate has been produced as Ex.15, and the learned Tribunal taking into account the fact, that he was to serve for another 18 years, and would have earned promotions as well, has taken the dependency of the family at Rs.11,395/- only, being 2/3rd of the income, and has applied a multiplier of 15 only. Thus, the assessment of compensation also cannot be said to be excessive, and the learned counsel could not show any infirmity either.

The appeal thus, has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

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